
(2014) 09 KL CK 0070

In the High Court Of Kerala

Case No : Writ Appeal Nos. 807, 842, 843, 844, 845, 849, 852, 864, 865, 868, 869, 871, 872, 873, 874, 882, 883, 886, 887, 888, 891, 892, 893, 896, 898, 899, 900, 901, 905, 906, 910, 916, 917, 926, 929, 932, 935, 941, 942, 943, 944, 948, 955, 956, 962, 963, 964, 965

Ultra Tech Cement Limited

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 239, 243, 258, 372
General Clauses Act, 1897 — Section 21, 3(8)
Government of India Act, 1935 — Section 124, 94
Railways Act, 1890 — Section 2, 29, 3(13), 30, 31
Railways Act, 1989 — Section 2, 2(11), 200, 29, 3(8)

Citation : (2014) 4 KHC 190

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : George Jacob (Jose) and Mereena Joseph, Advocate for the Appellant; P. Parameswaran Nair, ASG, James Kurian, SC and C.S. Dias, SC, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. All these Writ Appeals have been filed against the judgment dated 31.03.2014 of a learned Single Judge passed in W.P. (C) No. 13271 of 2011 and other connected Writ Petitions by which judgment all the Writ Petitions have been dismissed.

2. Writ Petition No. 13271 of 2011 was treated as the leading Writ Petition by the learned Single Judge, Writ Appeal No. 917 of 2014 arising out of Writ Petition No. 13271 of 2011 is being treated as the leading Writ Appeal. Reference of pleadings in W.A. No. 917 of 2014 shall suffice in deciding all the Writ Appeals. The appellants hereinafter are referred to as the Writ Petitioners and the respondents as the respective respondents arrayed in the Writ Petitions. The

challenge in all the Writ Petitions was to the penal demurrage charges as notified by the respondents for the period from 2nd May 2011 to 31st July, 2011, rate Circular No. 74 of 2005 as modified by the rate Circular dated 17.01.2008 including the consequential orders.

3. The facts giving rise to Writ Petitions are: The petitioners in (W.P(C) No. 13271 of 2011) are the companies engaged in manufacture and sale of cements. Consignments of cements brought to the Goods sheds of Nileshtar, Valapattanam, Vadakara, Kallai West Hill, Tirur and Palakkad junction in railway wagons are unloaded by workers registered with the Kerala Headload Workers Board. The working hours of various Goods Sheds are from 6.00 a.m. to 10.00 p.m. For unloading goods brought by railway wagons free time is allowed. At the relevant time free time allowed for a full rake was nine hours, for a mini rake of 20 wagons 5 hours and for a rake of 21 wagons 7 hours. On the expiry of free time, demurrage charges were being levied at the rate of Rs. 100/- per wagon per hour. Demurrage charges are levied to ensure its speedy clearance and movement of railway wagons. By the rate Circular No. 74 of 2005 dated 19.12.2005 issued in exercise of the powers under Section 30 of the Railways Act, 1989 rates of demurrage charges were fixed. One of the provisions in the said Circular provided that in case excessive congestion takes place at any terminal, the Chief Commercial Manager (CCM), Chief Operations Manager (COM) at the Zonal level and the Divisional Railway Manager (DRM) at the Divisional level can levy the demurrage charges progressively increasing the rate subject to a maximum of six times of the prevalent rate. In pursuance of the rate Circular, decisions were taken to levy penal charges from 02.05.2011 to 31.07.2011 in the progressive manner to the extent of six times of the normal rate. Notices were issued by the Station Masters and various Goods Shed Officers which have been annexed in the Writ Petitions as Exts. P4 to P10. The notices mentioned that charging of penal demurrage charges will be implemented to speed up releasing of wagons which mentioned that up to two hours normal demurrage charges shall be levied and from 2 to 4 hours three times of the normal charges and above 4 hours, six times of the normal demurrage charges. Petitioners, aggrieved by the said notices filed the Writ Petitions. Writ Petition was subsequently permitted to be amended to incorporate challenge to rate Circular No. 74 of 2005 dated 19.12.2005 and the consequential order dated 29.11.2005, Exts. P11 and P12 respectively.

4. In the leading Writ Petition following are the relief's which were claimed.

"(i) to issue a writ in the nature of certiorari, or other appropriate writ or order quashing Exhibits P4 to P10 communications of the respective respondents.

(ii) to issue a declaration that respondents 2 to 12 have absolutely no authority to require the petitioners, if occasions arise, to pay penal demurrage charges beyond Rs. 100 which is the rate fixed by the Central Government.

(iii) to issue a writ in the nature of mandamus or other appropriate writ or order

restraining respondents 2 to 12 from levying penal demurrage charges beyond Rs. 100/- per wagon of the Indian Railways and the Container Corporation of India in the absence of any fixation or alteration of rates by the first respondent as enjoined in Sections 30 and 31 of the Indian Railways Act.

(iii)(a) to issue a writ in the nature of certiorari or other appropriate order quashing Exhibits P11 and P12.

(iv) to issue a writ in the nature of mandamus or other appropriate writ or order directing respondents 2 to 12 to refrain from levying wharfage charges in respect of consignments which remain uncleared in the wagons.

(v) to grant such other relief's as may be prayed for and to which this Hon'ble Court may deem just and necessary in the facts and circumstances of the case".

Counter affidavit as well as counter affidavit to the amended Writ Petition were filed on behalf of the respondents to which reply affidavit has also been filed by the petitioners.

5. The arguments in the Writ Appeals have been led by Shri George Jacob. We have also heard Shri K. Sreekumar, Senior Advocate, Shri Lal K. Joseph and other counsel appearing in the different Writ Appeals. Shri C.S. Dias, Standing Counsel for the Railways led the arguments on behalf of the respondents. We have also heard Shri James Kurian, Standing Counsel for the Railway.

6. Learned counsel for the appellant in support of the appeals raised various submissions as to be noted hereinafter. (i) Learned counsel for the appellant submitted that the power to fix rates is vested with the Central Government under Section 30 of the Railways Act, 1989 (hereinafter referred to as "Act 1989") whereas the rate Circular, Ext. P1 has been issued by the Railway Board which has no authority or jurisdiction to fix the rates. Hence the rate Circular is without jurisdiction. (ii) It is submitted that although powers under the Indian Railways Act, 1890 (hereinafter referred to as "Act 1890") of the Central Government to fix rates were invested to the Railway Board under the Railway Board Act, 1905 (hereinafter referred to as "Act 1905") under which power the Railway Board had been fixing rates for demurrage but after enactment of Act, 1989, Railway Board cannot exercise any power of the Central Government since no investment had been made of the powers under Act, 1989 to the Railway Board. (iii) It is submitted that Section 200 of Act, 1989 shall not continue the investment of the powers of the Central Government on the Railway Board under Act, 1905 after the repeal of Act, 1890. (iv) It is thus submitted that the Railway Board cannot exercise powers of the Central Government nor can fix any rate of demurrage as has been done in the rate Circular, Ext. P1. (v) The further submission which has been advanced by the learned counsel for the petitioners is that even if it is accepted that the Central Government can fix the rates in exercise of the powers under Section 30 of Act 1989, the said powers cannot be further delegated to Railway Officers as has been done by the rate Circular, Ext. P11. (vi) It is submitted that power of levying penal charges has actually been

exercised by the Railway Officers including the CCM, COM and DRM which power could not have been delegated by the Central Government to the said Officers. (vii) It is submitted that Sec. 30 of Act, 1989 does not empower any sub delegation. Hence sub delegation of the power by the Central Government to the Officers of the Railway is without jurisdiction. The maxim "delegatus non potest delegare" has been relied on to support the above submissions. (viii) It is further submitted that even though the rate Circular authorizes the powers to be exercised by the CCM, COM and DRM, the notices and orders for imposing increased charges have been issued by the Goods Sheds Officers, Station Masters and other Railway Officers who have no authority to do so. (ix) It is submitted that rate Circular, Ext. P1 was not notified in the Gazette nor has been published in any other manner. The rate Circular having not been notified and published, the said Circular cannot be utilized for imposing increased penal charges on the petitioners. (x) It is submitted that although normal working hours in Good Sheds is 6.00 a.m. to 10.00 p.m. but the workers in the State of Kerala works only from 8.30 a.m. to 5.30 p.m. The workers being not available to work from 6.00 a.m. to 10.00 p.m., it is not the fault of petitioners in not uploading the wagons within the free time allowed. Goods Sheds are the scheme covered area under the Kerala Headload Workers Act under which the petitioners are compelled to employ only headload workers registered with the Headload Workers Board. The headload workers are not willing to work even on extra payment after 5.30 p.m. (xi) It is further submitted that the Goods Sheds do not have necessary infrastructure facility including toilets and other facilities for workers which is a hindrance in the working of the workers in the free time allowed for clearing the wagons. There are no amenities in different Good sheds.

7. Refuting the submissions made by the learned counsel for the petitioners, learned counsel appearing for the Railway has submitted that imposition of increased penal demurrage charges is in accordance with the provisions of Act, 1989. He submitted that the submission that the Railway Board has no jurisdiction to fix the rate under Sec. 30 of Act, 1989 is incorrect. It is submitted that Railway Board was initially invested with the powers of the Central Government to fix rates under Act, 1905. It is submitted that the Railway Board functions as the Railway Ministry in the Central Government. The Chairman of the Railway Board is the Principal Secretary in the Ministry of Railways. It is submitted that Railway Board thus works as Ministry of Railways, Government of India and the rate Circular, Ext. P1 has been issued by the Central Government, Ministry of Railways. It is submitted that reading of the Circular itself makes it clear that rate has been issued by the Ministry of Railways, Government of India and there is no question of violating Sec. 30 of Act, 1989. Refuting the submission regarding sub delegation it is contended that the rate Circular has not sub delegated the power to fix any rate by any Officer of the Railway. It is submitted that rates have been fixed by the rate Circular, Ext. P11 itself and the rate Circular gives the conditions and guidelines under which the said rate Circular including increased penal charges shall be implemented by the

designated Railway Officers. It is submitted that there is no question of exercise of power of fixing rate by any subordinate Railway Officer in the present case. It is further submitted that the decision to impose increased penal rates have always been taken by CCM, COM and DRM. It is submitted that all proposals for increase of demurrage charges were placed before the authorities as was specified in the rate Circular who themselves have taken decision to implement increased penal rate and orders and notices issued by the Chief Commercial Superintendent of Goods Sheds and Station Masters have been issued after decision was taken by the competent authority. It is submitted that original files of the Railway containing the decision were placed before the learned Single Judge which clearly proved that the decision to impose penal rate of demurrage was taken by the CCM, COM and DRM and consequential actions were taken thereafter. It is submitted that rate Circulars are not required to be published in the Gazette of India nor any provision in the Act or Rules required that. It is submitted that rate Circular has been published in the Railway Web Site and is affixed on the notice board at all level including every Goods Sheds. It is submitted that each of the petitioners were well aware of the rate Circular since demurrage charges were increased by rate Circular, Ext. P11 and have been implemented by the Railway authorities from 29.12.2005 and petitioners have been making payment of demurrage charges under the said rate Circular. It is submitted that before imposing penal rate of demurrage charges 48 hours" advance notice as required by the rate Circular is given to all concerned. With regard to the submissions of the petitioners that the headload workers in Kerala do not work from 6.00 a.m. to 10.00 p.m. it is submitted that the rate Circular are uniformly applied in the entire country and no exception can be made to State of Kerala. It is submitted that unloading of the wagons is the responsibility of the consignee. It is the consignee who has to take all steps for unloading and to arrange workers for unloading wagons is the duty and responsibility of the consignee who alone is responsible for the said requirement. In so far as lack of amenities in the Goods Sheds is concerned it is submitted that all the Goods Sheds are fully equipped with all necessary amenities and the above allegation is incorrect. Lastly, it is submitted that under the Indian Railways Code Tariff (Commercial Department), petitioners can apply for waiver of penal demurrage charges giving details on the grounds on which waiver is prayed for which shall be considered by the competent Railway authorities and there is also provision for an appeal against decision on waiver for penal demurrage charges, the said issues need not be entertained in the Writ Petitions.

8. Learned counsel for the parties has placed reliance on various judgments of the Apex Court, this Court and other High Courts which shall be referred to hereinafter while considering the submissions in detail.

9. From the pleadings on record and the submissions raised by the learned counsel for the parties following are the issues which arise for consideration in these batch of Writ Appeals.

1. Whether investment of the powers of the Central Government under the Railway Act, 1890 to the Railway Board by notifications issued under the Railway Board Act comes to an end after the enactment of Act 1989?
2. Whether the Railway Board can exercise powers of the Central Government after enactment of Act 1989 without there being any further investment of power of Act 1989 by the Central Government?
3. Whether the Railway Board can exercise the powers of the Central Government and the rate Circular, Ext. P11 issued by the Railway Board can be treated to be the rate Circular issued by the Central Government?
4. Whether the Central Government in exercise of the powers under Sec. 30 of Act 1989 as a delegatee of the power to fix the rate can further delegate the power to fix rate to any other authority, i.e. including the CCM, COM and DRM?
5. Whether the rate Circular, Ext. P11 sub delegates the power to fix the rate of demurrage charge on CCM, COM and DRM?
6. Whether the rate Circular Ext. P11 cannot be enforced having not been published in the Gazette of India or by any other accepted mode?
7. Whether due to the provisions of the Kerala Head Load Workers Act restricting the right of employer in a scheme covered area to engage only registered head load workers the Railway Administration cannot demand penal demurrage charges from the petitioners?
8. Whether increased demurrage charges are not leviable to be charged due to lack of amenities in the various Railway Goods Sheds?
9. Whether levy of increased/penal charges have been made by Station Masters, Goods Shed Superintendents and other Officers of the Railway Administration and the notices Exts. P4 to P10 are illegal and unenforceable?
10. Before we proceed to consider the respective submissions of learned counsel for the parties and the issues as noted above, it is necessary to have a look on the statutory provisions regulating the field.
11. Act, 1890 was enacted to consolidate and amend the law relating to Railway in India. Section 29 of Act, 1890 provided for power of the Central Government to fix maximum and minimum rates. Section 46C(d) of the Act defining demurrage as well as Sec. 29 are quoted as below:

"Section 46C(d) "demurrage" means the charge levied for the detention of any rolling stock after the expiry of free time, if any, allowed for such detention".

Section 29. The Central Government may by general or special order fix maximum and minimum rates for the whole or any part of a railway, other than a minor railway, and prescribe the conditions in which such rates will apply".

Railway Board was constituted under resolution of the Government of India in

18th February, 1905. Act, 1905 enacted to provide for investing the Railway Board with the powers of the Governor General in Council under Act, 1890. Section 2 of the Act provided that the Governor General in Council may by notification invest the Railway Board with all or any powers of the Governor General in Council under Act, 1890 with respect to all or any Railway. The words Governor General in Council in Sec. 2 was substituted with the words Central Government in the year 1937 after the Government of India Act, 1935 was enforced.

12. The Central Government issued notification under Act, 1905 investing the power under Act, 1890 to the Railway Board for fixing the rate. One of the notifications dated 08.11.1969 published in the Gazette of India dated 18.11.1969 has been placed before us. The Central Government invested Railway Board with all the powers of the Central Government under Sec. 29 of the Act 1890. Act, 1989 was enacted by the Parliament to consolidate and amend the law relating to Railways. Demurrage is defined in Sec. 2(11) of Act, 1989 which is same as was provided in Act, 1890. Chapter VI of Act, 1989 provides for fixation of rates. Sections 30, 31 and 32 which are relevant are quoted as below:

"30. Power to fix rates:-(1) The Central Government may, from time to time, by general or special order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may, by a like order, fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply.

31. Power to classify commodities or alter rates.-The Central Government shall have power to-

(a) classify or re-classify any commodity for the purpose of determining the rates to be charged for the carriage of such commodities; and

(b) increase or reduce the class rates and other charges.

32. Power of railway administration to charge certain rates.-

Notwithstanding anything contained in this Chapter, a railway administration may, in respect of the carriage of any commodity and subject to such conditions as may be specified.-

(a) quote a station to rate;

(b) increase or reduce or cancel, after due notice in the manner determined by the Central Government, a station to station rate, not being a station to station rate introduced in compliance with an order made by the Tribunal;

(c) withdraw, alter or amend the conditions attached to a station to station rate other than conditions introduced in compliance with an order made by the Tribunal; and

(d) charge any lump sum rate".

Section 200 of Act, 1989 is provision for repeal and saving. In exercise of the powers under Sec. 30 the rate Circular No. 74 of 2005 dated 19.12.2005 (Ext. P11) had been issued. Para 2.2 contains the details of free time for loading and unloading of wagons at Goods Sheds and sidings. Paras 3.2 and 3.3 which are relevant for the present case are as follows:

"3.2. For other than steel plants:

In case of other rail users, demurrage charge @ Rs. 75/- per 8 wheeled wagon per hour or part of an hour for detention of wagon in excess of the permissible free time for loading or unloading shall be levied.

3.3. In case excessive congestion takes place at any terminal/steel plant, CCM/COM/DRM can increase the demurrage rates, even at progressively increasing rate subject to a maximum of six times of the prevalent rate. This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period."

Corrigendum dated 17.01.2008 was issued deleting paras 3.1 and 3.2 and para 3.1 as enforced with effect from 01.02.2008 is as follows:

"3.1 Demurrage charge shall be levied @Rs. 100/- per 8 wheeled wagon per hour or part of an hour, for detention of wagon in excess of the permissible free time for loading or unloading."

Ext. P12 is the order dated 29.12.2005 issued by the Chief Commercial Manager notifying the details of rate Circular dated 19.12.2005.

13. After noticing the relevant statutory provisions, now we proceed to examine the various issues raised in these Writ Appeals.

14. Issue Nos. 1 to 3 being interconnected are being taken together. As noted above, submissions of petitioners is that Sec. 30 of Act, 1989 empowers the Central Government to fix rates which power has been exercised by the Railway Board which is violation of Sec. 30 of Act, 1989 invalidating rate Circular Ext. P11. Section 30 empowers the Central Government by general or special order to fix rate for the whole or any part of the Railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rate shall apply. Rate Circular No. 74 of 2004 has been filed as Ext. P11. It is useful to note the heading of the Circular and the subject which is noted as below:

"Rates Circular No. 74 of 2005

Government of India

Ministry of Railways

Railway Board

No. TC-I/2005/201/2 New Delhi, Dt. 19.12.2005

General Manager (Commercial)

General Manager (Operating)

All Indian Railways

Sub: Free time and rates of demurrage, wharfage & stacking charges.

..... "

The Circular was signed by the Joint Director, Traffic Commercial (Rates), Railway Board. A perusal of the heading of the Circular indicates that the said Circular is by the Government of India, Ministry of Railway. Learned counsel for the Railway has submitted and it has also been pleaded in the counter affidavit that Ministry of Railways is nothing but Railway Board and the Chairman of the Railway Board is the Principal Secretary of the Ministry of Railways. In paragraph 4 of the counter to the amended Writ Petition No. 13271 of 2011, the following has been stated:

"In this connection, it is respectfully submitted that Ext. P11 (R.3-1) is an order issued by the Govt. of India, Ministry of Railways (Railway Board), as reflected from the face of the order itself. It can be seen that Ext. P11 comprises two separate orders such as orders Dated 19.12.2005 and 17.01.2008, dealing with the same subject matter. They are orders having application throughout the entire Railways in India. The different orders to be issued by Ministry of Railways, Govt. of India are being issued in similar manner. The Railway Board is the secretariat of Ministry of Railways and the Chairman Railway Board is the Ex-officio Principal Secretary of the Govt. of India. Similarly the heads of different departments in the Railway Ministry in the secretariat, viz., Railway Board are called members, Directors and respective Directorates of the Departments concerned. All the decisions and orders of central Government pertaining to Railways, is being issued under the Ministry of Railways, by the designated Departmental Authority in the Railway Secretariat viz., Railway Board. Being so it is not correct and proper to treat Ext. P11 order as an order issued by the 13th respondent the Joint Director, Traffic, Commercial (Rates) as pictured by the petitioners. It is an order of the Ministry of Railways, Govt. of India bearing signature of the competent and authorised officer of the department i.e., Joint Director (Traffic Commercial (Rates) in Railway Board representing the Ministry. In this connection it may kindly be noted that in the case of non-Railway Board representing the Ministry. In this connection it may kindly be noted that in the case of non-Railway matter pertaining to Central Govt., it is the principal Secretary or Secretary of the Department concerned who represents the Govt. and Govt. orders pertaining to the department in question, are usually issued by

such Secretary in the name of Govt. Such orders are not qualified as orders of the issuing Secretary concerned but, only as Govt. orders. They are very much the orders of the Central Government. Position is so with respect to State Govt. also."

Act, 1989 does not contain any definition of the Central Government. Central Government has been defined in Sec. 3(8) of the General Clauses Act, 1897. Section 3(8) is as follows:

"3(8) Central Government shall,-

(a) in relation to anything done before the commencement of the Constitution, mean the Governor General or the Governor General in Council, as the case may be, and shall include,-

(i) in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of Section 94 of the said Act; and

(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,-

(i) in relation to functions entrusted under clause (1) of article 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

(ii) in relation to the administration of a Part C state (before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and

(iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution."

15. Learned counsel for the Railway has referred to Government of India (Allocation of Business) Rules, 1961. Rule 2 of the Business Rules provides as follows:

"Allocation of Business-The business of the Government of India shall be transacted in the Ministries, Secretariats and Offices specified in the First Schedule to these rules (all which are hereinafter read to as "departments")"

Ministry of Railway (Rail Mantralaya) has been denoted as the Railway Board (Rail Board)

16. Rate Circular which has been signed by the Joint Director Traffic Commercial (Rates), Railway Board is an order merely authenticating the order of the Central Government according to the prescribed procedure. The order is professed to have been issued by the Government of India, Ministry of Railways which was entitled in law to transact the business of Railway. The petitioners in their reply affidavit while replying paragraph 4 of the counter affidavit quoted above has only reiterated that the Railway Board has no authority or jurisdiction to issue orders of the Government of India, Ministry of Railways. The rate Circular having been expressed in the name of the Government of India, Ministry of Railways, Railway Board we have no reason to not take the Circular as it is described as rates issued by the Government of India, Ministry of Railways.

17. Much emphasis had been made by the learned counsel for the petitioners on the submission that although there was investing of power of the Government of India under Act, 1890 on the Railway Board under Act, 1905, the said delegation shall not continue after enforcement of Act, 1989. Submission is that Section 200 of Act, 1989 only saves anything done or any action taken or purported to have been taken under Act, 1890 and the investing of power was under different Act i.e. Act, 1905. Hence Section 200 is not relevant for the present case.

18. Power under the Act, 1890 of the Central Government was admittedly invested to the Railway Board under the Act, 1905. Act, 1905 is still in force by virtue of Article 372 of the Constitution of India.

19. Various amendments made in Act, 1905 from time to time even after enforcement of the Constitution indicates that the said Act is still in force. Under Act, 1905, power of the Central Government was invested with the Railway Board regarding fixation of rate under Sec. 29. Section 29 of Act, 1890 is almost similar to the power of the Central Government given in Sec. 30 of Act, 1989. It is not disputed by the learned counsel for the petitioners that the power of the Central Government could have been exercised by the Railway Board under Act, 1890. Whether only due to enactment of Act, 1989 the Railway Board is denuded to exercise the power of Central Government is the question which has to be answered. We do not find any such indication in the provisions of Act, 1989 which may indicate that the power of the Central Government which was being exercised by the Railway Board cannot be exercised by the Railway Board. With regard to the powers under Act, 1989, merely because no fresh corresponding amendment has been made in Act, 1905 substituting the statute, Act, 1890 with the Statute, Act, 1989 it cannot be accepted that the power which was invested to the Railway Board has come to an end. It is well established principle of statutory interpretation that court should not adopt such interpretation which makes provisions of an Act unworkable and defeat the objects of the enactment. To accept the submission of learned counsel for the petitioners that since no fresh notification has been issued under Act, 1905 after enactment of Act, 1989 investing powers under Act, 1890 to the Railway Board, the Railway Board is denuded to exercise the powers of Central Government is to defeat the very

working of Act, 1989. Learned counsel for the Railways have relied on a decision of the Division Bench of the Allahabad High Court in W.P. No. 11168/2011 in N.P.K. Trade Links Ltd. v. Railway Board and others which was decided on 06.05.2013 in which one of us (Justice Ashok Bhushan, J.) was also a party. In support of his submission that the same rate Circular No. 74 of 2004 was challenged by the petitioners in the said Writ Petition which Circular as upheld upholding the power of the Railway Board to issue the said Circular. Learned counsel for the petitioners submitted that in the said case learned counsel for the petitioners had conceded the jurisdiction of the Railway Board to issue the rate Circular hence the said issue was not gone into by the Division Bench in detail thus the said judgment may not be treated as a judgment deciding the issues which had been raised in the present Writ Appeals. The Division Bench of the Allahabad High Court in N.P.K. Trade Linker (supra) was a case where rate Circular No. 74 of 2005 was challenged. Learned Single Judge in the impugned judgment has quoted the issues which were taken for consideration by the Division Bench in its judgment. Learned counsel for the petitioners are right in their submission that before the Division Bench of the Allahabad High Court petitioners did not dispute that Railway Board has jurisdiction to fix the rate. Hence the Division Bench did not enter into the issues which have been raised in these Writ Appeals. Thus we have proceeded to consider the submissions raised by the learned counsel for the petitioners regarding the jurisdiction of the Railway Board to issue the rate Circular on merits.

20. In view of the forgoing discussion we are of the considered opinion that rate Circular, Ext. P11 issued is to be treated as the Circular issued by the Central Government and cannot be held to be beyond jurisdiction of Sec. 30 or violative of Sec. 30 of Act 1989. Issues 1 to 3 are decided accordingly.

21. Issue Nos. 4 and 5 being inter related are being taken together. The submission of learned counsel for the writ petitioners, as noted above, is that the Central Government, having been delegated power to fix rates under Section 30 of the Indian Railway Act, 1989, cannot further delegate power to fix penal rate/increased rate of demurrage charges to CCM, COM and DRM. The submission is that the delegatee is incompetent to further delegate its legislative power. The maxim "delegatus non protest delegare" has been pressed into service. Thus, the contention is that there is sub-delegation of power under Section 30 of the Central Government which not having been contemplated by Act, 1989, action taken to increase penal rate is without jurisdiction. Before we advert to a scheme as delineated under Section 30 of Act, 1989, it is necessary to consider the concept of sub-delegation of legislative function.

22. The Central Government under Section 30 of Act, 1989 exercises the legislative function. It is well settled that legislation delegating power of rate fixation is delegation of a legislative function. De Smith's Judicial Review Sixth Edition, while distinguishing legislative function with that of administrative acts, had made the following observations:

"B-010: A distinction often made between legislative and administrative acts is that between the general and the particular. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases: an administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy of expediency or administrative practice. Legal consequences flow from this distinction."

23. Section 30 of Act, 1989 clearly delegates legislative power to Central Government to fix rate. Sub-delegation implies further delegation of the same power, which was originally delegated by the legislature. The governing principle is that legislative powers must be exercised by the delegatee himself and by none else. A delegatee cannot further delegate his power unless the parent law permits it to do so. In the above context, the doctrine "delegatus non potest delegare", that is, a delegatee cannot further delegate, comes into play. Thus, if a law confers power on the Central Government to make rules, it cannot further delegate that power to any other officer, unless the parent law itself gives authority to the Government to that effect.

24. The Apex Court had occasion to consider the concept of sub-delegation in Director General, E.S.I. and another Vs. T. Abdul Razak, etc., . The following proposition of law was laid down in paragraph 14 of the judgment:

"14. The law is well settled that in accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. (See: Halsbury's Laws of England, 4th Edn. Vol. 1 para 32 p.34; Craies on Statute Law, 7th Edn. p.316; The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, and Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation, "

25. The above judgment explains the scope and ambit of the maxim "*delegatus non potest delegare*".

26. The same principles were laid down by the Apex Court in Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation, . Following was laid down in paragraphs 5 to 9:

"5. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maximum *delegatus non potest delegare* is not being applied

specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In *Barium Chemicals Ltd. v. Company Law Board*, this Court said in respect of sub-delegation:

"Bearing in mind that the maxim *delegatus non potest delegare* sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication."

7. Again in *Mangal Chulil v. Manilal Maganlal*, while considering the scope of Section 481(1)(a) of the Bombay Provincial Municipal Corporation Act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the rules and that officer to whom such functions were delegated could not further delegate the same to another.

8. In Halsbury's Laws of England, 4th Edn., Vol. I, in respect of sub-delegation of powers it has been said:

"In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender & Son Ltd. v. Minister of Housing and Local Government*) unless sub-delegation of the power is authorised by express words or necessary implication (*Customs and Excise Comrs. v. Cure and Deeley Ltd.* and *Mungoni v. Attorney General of Northern Rhodesia*). There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind. *Allam & Co. v. Europa Poster Services Ltd.*....."

9. In the case of *Harishankar Bagla v. State of M.P.*, while examining the scope of Section 4 of the Essential Supplies (Temporary Powers) Act, 1946 it was said:

"Section 4 of the Act was attacked on the ground that it empowers the Central Government to delegate its own power to make orders under Section 3 to any officer or authority subordinate to it or the Provincial Government or to any officer or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorized to further delegate its power in respect of the exercise of the powers of Section 3. Mr. Umrigar contended that it was for the Legislature itself

to specify the particular authorities or officers who could exercise power under Section 3 and it was not open to the Legislature to empower the Central Government to say what officer or authority could exercise the power.

Reference in this connection was made to two decisions of the Supreme Court of the United States of America-Panama Refining Co. v. Ryan and Schechter v. United States. In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. These decisions in our judgment do not help the contention of Mr. Umrigar as we think that Section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself."

In the aforesaid case, the sub-delegation was upheld because Section 4 itself enumerated the classes of persons to whom the power could be delegated or sub-delegated by the Central Government."

27. From the proposition of law as laid down by the Apex Court, it is clear that delegatee of legislative function has to exercise that power himself and he cannot further sub-delegate that power unless there is any indication in the statute permitting sub-delegation.

28. The question to be answered in the present case is as to whether the Central Government has further delegated its power to fix rates as delegated to it by legislature under Section 30 of the Act, 1989 to CCM, COM and DRM, answer of which shall depend on the rate circular dated 19.12.2005, Exhibit P1. As noted above, Section 30 of the Act, 1989 empowers the Central Government to fix rates for different classes of goods and specify in such order the conditions subject to which such rates shall apply. The rate circular indicates that the demurrage charges have been fixed in paragraph 3.1 as amended by circular dated 17.1.2008, i.e., at the rate of Rs. 100/- per 8-wheeled wagon per hour. Further, clause 3.3 provides as under:

"3.3 In case excessive congestion takes place at any terminal/steel plant, CCM/COM/DRM can increase the demurrage rates, even at progressively increasing rate subject to a maximum of six times of the prevalent rate. This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period."

29. The submission of learned counsel for the writ petitioners is on the strength of paragraph 3.3 as noted above. The submission is that power has been given to the CCM, COM and DRM to fix penal rates i.e., progressively increasing rate subject to maximum six times of the prevalent rate, which is nothing but delegation of legislative power.

30. As noted above, Section 30(1) of the Act, 1989 empowers the Government to fix the rates as well as specify in such order the conditions to which such rates shall apply. Paragraph 3.3 of the rate circular contemplates that rates of demurrage charge have been fixed which can be imposed at progressively increasing rate subject to maximum six times. Paragraph 3.3 contains conditions for imposing the demurrage at progressively increasing rates. Paragraph 3.3 further provides that the above penal demurrage rate should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period. Paragraph 3.3 is thus not a provision delegating power on the designated authority to fix rates, rather the said paragraph gives power to implement the rate, which may be upto the maximum of six times of the prevalent rate. Said power is to be exercised in case of excessive congestion at any terminal. The second line of the paragraph, which specifically mentions that "this penal demurrage rates should be implemented..... " indicates that the power, which is given to CCM, COM and DRM, is to implement the rates, which have already been fixed by the rate circular. CCM, COM and DRM thus exercise a statutory power by virtue of paragraph 3.3 to implement the rate circular in a progressive manner, which power cannot be said to be a power to fix rates. Then Section 30(1) of the Act, 1989 itself empowers the Central Government to specify the conditions subject to which rates shall apply. We are thus not persuaded to accept the submission of learned counsel for the appellant that paragraph 3.3 is sub-delegation of legislative power by the Central Government of fixing rates.

31. In this context, reference is made to Division Bench judgment reported in *Electric Inspector to Govt. of U.P. Vs. R.J. Singh*, . In the above case the Court was considering Rule 48 of the Electricity Rules (1937) framed under the Electricity Act, 1910. Rule 48(1) has been quoted in paragraph 2 of the judgment, which was to the following effect:

"....Rule 48(1) reads as follows:

"No electrical installation work..... shall be carried out upon the premises of or on behalf of any consumer or owner for the purposes of the supply of energy to such consumer or owner, except by an electrical contractor licensed by the State Government in this behalf".

32. Rule 48(2) of the Electricity Rules (1937) provides that Rule 48(1) would come into force in respect of any State on such day as the State Government may by notification in the official Gazette appoint. There was no rule empowering the State Government to make rules. The State Government issued a notification dated 2nd June, 1942 prescribing conditions for the grant of licences to electrical contractors. In exercise of such power, the licence of the contractor was cancelled, which was challenged in the Writ Petition. One of the submissions made before the Division Bench was that the State Government itself being delegatee, it could not have conferred such power to the Electric Inspector. Repealing the above submission, the following was laid down in paragraphs 10

and 11 in Electric Inspector's case (supra):

"(10) Sri Pandey has pressed upon us the two contentions which have been repelled by our brother Jagdish Sahai. He told us that his argument before our brother Jagdish Sahai was misunderstood and that he did not mean to contend that there was excessive delegation of powers by the Central Electricity Board to the State Government. His argument was, and in any case now is, that Rule 48 conferred no power upon the State Government to make rules regarding the grant and cancellation of a licence and that it could not confer any such power because *delegatus non potest delegare*. Rule 48 certainly conferred upon the State Government the power of granting a licence and this power included the power to cancel a licence already granted vide S. 21 of the General Clauses Act. The rule did not expressly authorise it to make rules for its own guidance in the matter of granting and cancelling licences but this fact did not prevent its doing so. Any authority upon whom a power is conferred is competent to make rules for its own guidance in the exercise of it.

The authority conferring the power may make rules governing its exercise; if it has done so, the rules made by the authority should not clash with any of them and must be in conformity with them. If it has not done so, the authority is free to make any rules. Obviously, if it can exercise the power without any rules being made by it, it can certainly do so in accordance with rules made by it and brought to the notice of all interested. It is always better that the power is exercised in accordance with certain rules than that it is exercised unfettered by any rules. If the State government could cancel a licence without there being any rules we fail to understand why it could not cancel a licence in accordance with certain rules, though made by itself for own guidance. In the case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, also no express power was conferred upon the Central Government to make rules regarding licences under the Cotton Textiles Order; still the Central Government made rules and the Supreme Court applied them.

It was not even argued before the Supreme Court that the Central Government could not make them because the power to make them was not conferred upon it by the Order. A statutory provision empowering the Federal Communications Commission to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice" has been interpreted by the Supreme Court of America as explicitly and by implication delegating to the Commission power to resolve subordinate questions of procedure and as not merely conferring power to promulgate rules generally applicable to all proceedings before the Commission but also delegating broad discretion to prescribe rules for specific investigations; see *Federal Communications Commission v. Schreiber*. 14 Law E (2d) 383. We are, therefore, of the opinion that the notification issued by the State Government is not rendered invalid by the mere fact that rule 48 did not authorise it.

(11) If rule 48 had expressly conferred upon the State Government the power to

make rules regarding grant and cancellation of licences it would not have been hit by the maxim *delegatus non potest delegare*. Conferring the power upon the State Government to make rules for the grant and cancellation of licences would not be delegating to the State Government any power delegated to itself. No power has been delegated to the Central Electricity Board to make rules regarding the grant and cancellation of licences; actually the Indian Electricity Act contains no provision about licensing electrical contractors at all. So, even if the Central Electricity Board had conferred upon the State Government the power to make rules regarding the grant and cancellation of licences it would have been conferment of a new power and not of its own power. What the maxim means is that the power that is delegated to a person cannot be sub-delegated by him to a third person.

The Central Electricity Board itself created the system of licencing electrical contractors and could confer upon the State Government the power of granting and cancelling licences and also the power of making rules for the grant and cancellation of licences. In this view we receive support from *Amaravathi Motor Transport Co., Amaravathi, by its President N. Hanumantharao Vs. State of Andhra and Another* in which Subha Rao, C.J., as he then was, and Satyanarayana Raju, J. held that Rule 134-A of the Madras Vehicles Rules made by the State Government empowering the Transport Board to delegate certain functions to its Secretary was valid."

33. As observed above, the powers in the rate circular given to CCM, COM and DRM are not sub-delegation of any power of fixing rate, rather rate circular provides for conditions for implementing the rates fixed by the Central Government. It is relevant to note that power to fix penal rates, i.e., progressively increasing rate upto maximum 6 times of the prevalent rate has been upheld by the Division Bench of the Allahabad High Court in *M/s. Nbk Trade Linker Pvt. Ltd.*'s case (Supra). It is useful to quote the following observation of the Division Bench:

"The penal charges under paragraph 3.3 of the Rates Circular No. 74 of 2005 are leviable where excessive congestion takes place at any terminal(Railway Station). The penal rates as contemplated under paragraph 3.3 is nothing but progressively increasing rate subject to a maximum of six times of the prevalent rate. Merely because the said rates have been termed as penal rates, they cannot be held to go beyond the scope of Section 30(2) of the Act, 1989, whereas the scale of rates can be prescribed by Railway Board under Section 30(2) of the Act, 1989, the said scale may also contain a rate which can be termed as penal rates. The object and purpose of prescribing progressively increasing rate is to release the rolling stock within the stipulated time to save economic loss to the railways. Prescribing progressively increasing rates act as a deterrent to the consignee to immediately unload their goods from their rolling stocks or to remove their goods from wharfage. The immediate removal of the goods from rolling stocks and wharfage becomes more necessary and imminent

when the terminal is congested.

The prescription of such rates which is deterrent is with the object and purpose which cannot be said to be unreasonable or violative of any constitutional provisions.

The Apex Court in *The Trustees of the Port of Madras Vs. Aminchand Pyarelal and Others*, had occasion to consider "Scale of Rates". Rules were framed under the Madras Port Trust Act, 1905. The "Scale of Rates" was framed by the Board. The Trustees of the Port of Madras filed Suit No. 158 of 1966 in the High Court of Madras for recovering a sum by way of demurrage from the respondents. The suit was resisted on various grounds including that the scale of rates fixed by the Board is ultra vires and void on the ground that it is unreasonable. In the above context the Apex Court had occasion to consider the nature of demurrage and the object for fixing of rates. The Apex Court held that the scale of rates has therefore to be framed in a manner which will act both as an incentive and as a compulsion for the expeditious removal of the goods from the transit area. Following was laid down in paragraph 28.

"28. There is a fundamental aspect of the fixation of rates which the High Court has overlooked. What is the object and purpose of the rates which the Board charges to the importer? Port Trusts do not do the business of warehousing goods and the rates which the Board charges for storage of goods are not levied as a means of collecting revenue. The Board is under a statutory obligation to render services of various kinds and those services have to be rendered not for the personal benefit of this or that importer but in the larger national interests. Congestion in the ports affects the free movement of ships and of essential goods. The scale of rates has therefore to be framed in a manner which will act both as an incentive and as a compulsion for the expeditious removal of the goods from the transit area. Ships, like wagons, have to be kept moving and that can happen only if there is pressure on the importer to remove the goods from the Board's premises with the utmost expedition. The writ petitioners in their reply statement filed in the High Court have referred to the Report of the Committee set up in 1967 by the Ministry of Transport and Shipping, Government of India. The Committee consisted of top-level experts, one each from the Ports of New York, London and Rotterdam who made a general survey of the Ports and Harbours in India. The Committee observed in its Report: "To effect quick clearance of the cargo from the Harbour, the demurrage rates may be so fixed as to make it unprofitable for importers to use the port premises as a warehouse." Viewed from this angle, the scale of rates cannot be characterised as unreasonable."

The objects and purpose for fixing rates for demurrage charges as laid down by the Apex Court in the above said case is regarding sea port which is also clearly applicable in the context of Railway Station where also there is necessity of removal of goods with utmost expedition. Section 30(2) of the Act, 1989 uses the phrase "fix the rates of any other charges incidental to or connected with

such carriage including demurrage and wharfage..... " Thus, in addition to fixing rates for demurrage and wharfage, Central Government is fully empowered to fix the rates of "any other charges incidental to or connected with".

The penal rates connected with demurrage charges thus can be statutorily fixed. Thus the mere fact that the progressively increasing demurrage charges to the maximum of six times are also referred to as penal charges does not make the charge beyond the authority of Section 30 of the Act, 1989 unreasonable or violative of Article 14 of the Constitution of India. Our above view finds full support from the judgment of the Apex Court in *Jagjit Cotton Textile Mills Vs. Chief Commercial Superintendent N.R. and Others*, . In the above case, a rule namely; Indian Railways Conference Association Rules framed under Indian Railway Act 1890 came for consideration. Rule 161-A of the said rules provides for penalty for loading coal beyond the permissible capacity of wagons. The recovery of penal charges from the consignees was challenged. It was contended that "rate" as defined under Section 3(13) of the Act, 1890 cannot mean any penal charges, the submission, which has been pressed in this bunch of writ petitions."

34. CCM, COM and DRM as authorised under paragraph 3.3 are thus only statutory authorities, which have been indicated in the delegated legislation, i.e., rate circular who are to implement the rate circular as per the conditions therein. Thus, the power given to the above authorities is a statutory power to be exercised on conditions as enumerated in rate circular and is not sub-delegation of any of legislative power of the Central Government under Section 30 of the Act, 1989. Thus, we do not find any substance in the submission of learned counsel for the writ petitioners that there is sub-delegation of legislative power in favour of CCM, COM and DRM.

35. Now we come to the 6th issue, i.e., with regard to consequence of non publication of rate circular in the Gazette. There cannot be any dispute with the proposition that in case a statutory provision requires publication of delegated legislation in Gazette, non publication in the Gazette shall make the delegated legislation unenforceable. Learned counsel for the appellant placed reliance on *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, . The Apex Court in the said case held that where the parent statute prescribes the mode of publication or promulgation that mode must be followed and where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the official gazette or some reasonable mode of publication. The following was laid down in paragraph 15 of the said judgment:

"15.....But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect must be published or promulgated in some suitable manner, whether such publication or

promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed and Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication it will take effect only when it is published through the customarily recognised official channel namely the official gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient."

36. Similar proposition has been laid down in subsequent judgment reported in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , where it was held that where the parent Act prescribes mode of publication or promulgation, requirement to follow that mode is mandatory. There cannot be any dispute with the proposition as laid down by the Apex Court in the above cases. Referring back to the Railway Act, 1989 and the rate circular, Exhibit P1, it is apparent that Section 30 of the Act, 1989 does not contain any requirement of publication of the subordinate legislation by any particular mode. Section 30(1) of the Act, 1989 provides that "Central Government may, from time to time, by general or special order fix,....". Fixation of the rate is to be done by general or special order. Parent statute does not prescribe any mode for publication of the above general or special order. The rate circular by which rate has been fixed also does not prescribe publication by any particular mode. It has been submitted on behalf of the respondents that circular has been published in the Railway Website, respective railway offices, all relevant railway establishments and terminal stations. We, thus, do not find any force in the submission of learned counsel for the writ petitioners that due to non publication of rate circular in the Gazette, the said circular is unenforceable. Paragraph 3.3 of the rate circular dated 19.12.2005 itself contemplates for wide publicity before implementation of penal demurrage rate in following manner:-

"..... This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period."

37. The petitioners in the Writ Petitions are aggrieved by the penal demurrage charges which has to be imposed by wide publicity and 48 hours notice. Thus mode and manner of imposing the penal charge has already been prescribed in the subordinate legislation; In the Writ Petition there is no pleading that above part of paragraph 3.3 has not been complied with.

38. The rate circular was issued in 2005 and the demurrage, according to the rate circular, was being paid and it was only when penal demurrage charges were imposed by the Railway authorities, challenge was laid in the Writ Petition.

Various notices issued by Station Master and Goods Superintendents, where Exhibits P4 to P10 were under challenge, where three times and six times of normal demurrage rates were levied. We are, thus, not satisfied that on the above submissions, rate circular can be set aside.

39. Issue No. 7 relates to the restriction on the writ petitioners to employ only registered headload workers under the Kerala Headload Workers Act. It is submitted that since there is restriction on the appellant to engage its own workers for the purpose of loading and unloading and loading and unloading are entirely dependent on registered headload workers, then imposition of demurrage charges is unjustifiable. The submission is that registered headload workers do not work from 6 a.m. to 10 p.m., rather they work only from 8.30 a.m. to 5.30 p.m. The learned Single Judge has considered the said submission and has rightly observed that unloading of the consignment is duty of consignee. It is the consignee, who has to arrange necessary workers for carrying out loading and unloading operation. The rate circular is uniformly applicable to entire country and making an exception for the State of Kerala in penal demurrage charges has rightly been held not to be acceptable. Citing particular circumstances and difficulties the writ petitioners can always avail the provisions prescribing waiver where authorities are empowered to waive the demurrage charges. Paragraph 1103(b) gives right to a consignee to apply for waiver giving relevant details and documentary evidence. Paragraph 1103 deals with waiver. Paragraph 1103(c) provides that application for waiver should be submitted to the Station Master/Goods Supervisor within ten days from the date upto which these charges had accrued. Thus, we are of the view that in the event of consignee, on account of any reason beyond his control, had suffered penal demurrage charges, he is at liberty to move an application for waiver. Paragraph 1104 also empowers a consignee/consignor to prefer an appeal to higher authorities.

40. Thus, the submission of learned counsel for the writ petitioners that on account of operation of Headload Workers Act in the State of Kerala, penal demurrage charges should not be imposed, cannot be accepted.

41. Now we come to Issue No. 8. The contention of appellant's counsel is that due to lack of amenities, loading and unloading workers of the writ petitioners are unable to perform their duties efficiently and it is incumbent on the authorities to provide for amenities. The learned Single Judge has gone into the said submission and after noticing the pleadings made on behalf of the Railways, had found that on the basis of said submission the challenge to penal demurrage charges cannot be upheld. In the counter affidavit filed in the Writ Petitions, the respondents have pleaded that amenities have been provided for. We are of the view that on this ground also challenge to rate circular cannot be upheld.

42. Now we come to the last submission raised by learned counsel for the writ petitioners that the order imposing penal demurrage charges has been issued by Station Master/Goods Superintendent and officers, who are not even referred to

in paragraph 3.3 of the rate circular. The said submission has been vehemently denied and it has been submitted that all orders where penal demurrage charges have been imposed in an increasing manner have been taken by the CCM, COM and DRM. It is submitted that before the learned Single Judge the original records of the Railway were produced. The learned Judge perused the records and was fully satisfied that the order for imposing penal demurrage charges was passed by the designated authority as specified in Exhibit P11. It was held that Exhibits P4 to P10 were consequential proceedings passed pursuant to the orders passed by DRM.

43. Having gone through the judgment of the learned Single Judge which was delivered after perusal of the original records, we do not find any good ground to have any different view with regard to above submission.

44. In the Writ Petitions, which was filed by the writ petitioners, an interim order was passed. In these Writ Appeals also an interim order was passed subject to condition of deposit of 50% of the amount demanded.

45. In view of the foregoing discussion, we confirm the judgment of the learned Single Judge. While confirming the judgment of the learned Single Judge dated 31.03.2014, we dispose of these Writ Appeals in the following manner:

(1) The writ petitioners are permitted to make an application for waiver before the Station Manager/Goods Supervisor within 30 (thirty) days from today giving all details along with reasons and relevant records as necessary.

(2) Station Master/Goods Supervisor shall forward the application for waiver of demurrage charges to the Divisional Officer with his remark within 15 (fifteen) days of receipt of the application.

(3) The Divisional Officer shall take a decision on the waiver application considering the reasons and circumstances given by the writ petitioners in the waiver application. Consequential orders be issued thereafter. In case the writ petitioners are aggrieved by the said decision, they can prefer appeal to the higher authority.

The parties shall bear their own costs.